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6 Attorneys for *Specially Appearing Defendant*  
BUMBO (PTY) LTD.

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11 DYLAN LAMM, a minor by and  
12 through his guardian ad litem MARY  
CATHERINE DOHERTY; and KEVIN  
LAMM.

13 Plaintiffs.

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15 BUMBO, BUMBO LIMITED, BUMBO  
16 (PTY) LTD.; TARGET  
CORPORATION; and DOES 1 to 20.

## Defendants

Case No. C-07-04807 MHP

**DECLARATION OF JEFFREY M  
BORTZ IN SUPPORT OF REPLY  
TO PLAINTIFF'S OPPOSITION  
TO DEFENDANT BUMBO (PTY)  
LTD'S *AMENDED* MOTION TO  
QUASH AND MOTION TO  
DISMISS**

Date: March 24, 2008

Date: March 27  
Time: 2:00 p.m.

Place: Courtroom of the Hon.  
Marilyn Hall Patel

20 I, Jeffrey M Bortz, declare:

21       1. I am a director of the law firm of Werksmans Inc., attorneys licensed  
22 to practice under the laws of South Africa. I am licensed under the laws of South  
23 Africa to practice law in South Africa. I have practiced in the courts of South  
24 Africa for forty years. Accordingly, I am competent to address the law of South  
25 Africa as stated in this declaration. I am not counsel to any party in this action and  
26 am unfamiliar with the factual background of the claims made in this case as well  
27 as how plaintiffs claim to have served the South African company Bumbo (Pty)

28 DECLARATION OF JEFFREY M BORTZ IN SUPPORT OF  
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1 Ltd. I submit this declaration to advise the Court of service of process law in  
2 South Africa. If called as a witness, I could competently testify to the statements  
3 of law set forth in this declaration.

4 2. South Africa is not a party to the Convention of 15 November 1965  
5 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or  
6 Commercial Matters, commonly referred to as the Hague Service Convention.  
7 Service of process relating to a lawsuit initiated outside South Africa against a  
8 South African company is therefore governed exclusively by South African  
9 domestic law.

10 3. Attached hereto as Exhibit "A" is a true and correct copy of Rule 4 of  
11 the South African Uniform Rules of Court ("South African Uniform Rules"). Rule  
12 4 of the South African Uniform Rules is the sole approved method for service of a  
13 summons and complaint on a private company defendant under South African law,  
14 whether initiated domestically or outside South Africa.

15 4. If a party has not appeared in the action or has not waived Rule 4  
16 service, attempted service by electronic means, such as by e-mail, facsimile or  
17 letter is not valid under South African law, and the private defendant company,  
18 even if put on notice of the lawsuit by such means, is not deemed under South  
19 African law to have been properly and sufficiently served.

20 5. Pursuant to subsection (1)(a) of Rule 4 of the South African Uniform  
21 Rules, the sheriff of the community in which a private South African company  
22 defendant has its registered office or its principal place of business, and only the  
23 sheriff or a specifically designed representative from his office, may effect  
24 personal service of any process on such company defendant. No private party or  
25 other individual can effect service on a private company under Rule 4, and South  
26 African law does not recognize any exemption from, or relief from, the application  
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1 of Rule 4 based on particular circumstances. South African law does not recognize  
 2 any difference in the law addressing service whether the initial action is brought in  
 3 South Africa or in another country.

4 6. Thus, a predicate step to effecting service irrespective of whether the  
 5 initial action is brought in South Africa or outside the country is that the South  
 6 African court in the jurisdiction in which the private company has its registered  
 7 office or its principal place of business must direct the sheriff to initiate service of  
 8 process consistent with Rule 4 because the sheriff is not authorized to accept any  
 9 other judicial documents for service on a private company defendant.

10 7. In order properly to serve a South African company, the sheriff must  
 11 then also deliver a copy of the process to a responsible employee thereof at the  
 12 South African company's registered office or its principal place of business within  
 13 the court's jurisdiction, or if there is no such employee willing to accept service, by  
 14 affixing a copy to the main door of such office or place of business, or in any  
 15 manner otherwise provided by law.

16 8. Further, pursuant to subsection (1)(d) of Rule 4, the sheriff or his  
 17 specifically designed representative has the duty to explain the nature and contents  
 18 of the judicial document, whether civil summons, order or notice, to the person  
 19 upon whom service is being effected and to state in his return or affidavit or on the  
 20 signed receipt that he has done so. Service on a private South African company is  
 21 not effective unless such duty is rendered and the sheriff has completed an affidavit  
 22 attesting to same.

23 9. In order for a plaintiff who has filed an action outside South Africa or  
 24 the British Commonwealth to serve properly a defendant company in South Africa,  
 25 that plaintiff must request the South African court which has jurisdiction over the  
 26 private company to issue a directive to the sheriff to serve such summons and  
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1 complaint.

2 I declare under penalty of perjury under the laws of the United States of  
3 America, that the foregoing is true and correct.

4 Executed this 7th day of March 2008 at Sandown, Sandton, Republic of  
5 South Africa.

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Jeffrey M Bortz

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